

**REPLY UNDER 37 CFR 1.116  
-EXPEDITED PROCEDURE-  
EXAMINING GROUP 3623**

***REMARKS***

Claims 1 - 61 are pending in the application and are presented for reconsideration.

Claims 25-32 and 47-52 have been withdrawn from consideration.

Based on the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections, and withdraw them.

Applicant affirms the election of claims 1-24, 33-46 and 53-61.

***Drawings***

There is no indication in the Office Action regarding the acceptance of the drawings.

Applicant requests the Examiner to indicate acceptance of the drawings.

***Rejections under 35 U.S.C. §102***

The Examiner has rejected claims 1-14, 16-24, 33, 35, 37-41, 43, 45-46, 53-55, 57-58 and 60-61 as allegedly being unpatentable under 35 USC section 102(a) over an article entitled “Webvan: Rewriting the Rules On ‘Last Mile’ Delivery”, authored by Jean Murphy (hereinafter “Murphy article”). The Examiner has rejected claims 15, 34, 36, and 44 under the obviousness provisions of 35 U.S.C. §103 as allegedly being unpatentable over the Murphy article.

Applicants respectfully traverse these rejections because the Murphy article does not predate either the November 13, 2001 filing date of this application or the December 22, 2000 priority date of this application.

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Applicants note the Murphy article includes a copyright notice of year 2002. Applicants submit that year 2002 is the earliest date that the Patent Office may assert as the publication date of the Murphy article absent an independent authentication of the earlier alleged publication date. Because the Murphy article bears a year 2002 copyright notice, the August 2000 date cannot be used as a publication date of the Murphy article. With a publication date of year 2002, the Murphy article is not a section 102(a) reference.

Even though Applicants do not have the burden of proof of authenticating the date of the Murphy article, Applicants attempted to find a printed magazine containing the Murphy article. Applicants' attempts were unsuccessful. They did not find a printed magazine of the Murphy article. Applicants request the Patent Office note whether they found the Murphy article as a result of a search or a submission by a third party.

The undersigned attorney of record attempted to find an Internet verification of the publication date of the Murphy article. The undersigned attorney of record attempted to retrieve the article at archive.org, a website that stores web pages and provides a source of web pages that have disappeared from the world wide web. Appendix I is a printout of the dates available for the domain www.glscs.com that published the Murphy article. The earliest date available after the alleged publication date of August 2000 is September 14, 2000. The archived page of September 14, 2000 shown in Appendix II gives no indication of the Murphy article. The undersigned attorney of record was unable to find an independent verification of the publication date of the Murphy article.

Applicants accessed the Murphy article on the Internet at the URL on the bottom of the copy provided by the Patent Office. Applicants note that the heading "Webvan@Work" and the

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sections under this heading that are labeled 1B, 2B, 3B, 4B and 5B in the copy provided by the Patent Office are in a dark blue background with white font, in contrast to the main text of the article which is in a black font with white background. Further the font size appears to be a different size in the “Webvan@Work” section. This is clearly seen in the copy of the Murphy article provided by the Patent Office. In contrast, the other section “Webvan Economics” has a yellow background and black font matching the main article which appears to conform to how other articles are normally presented. Thus, the “Webvan@Work” section does not conform to normal article highlights, contains a different font from the rest of the Murphy article and appears to have been at a different time, and most likely in 2002. (Applicants also note that they have reviewed over 50 articles of the publisher selected at random on their website. Applicants note that none of these article had a similar blue background or font change.)

Because the Murphy article is not a proper 102(a) reference, the Murphy article cannot render claims 1-14, 16-24, 33, 35, 37-41, 43, 45-46, 53-55, 57-58 and 60-61 unpatentable. Therefore, it is respectfully submitted that the rejection is improper and should be withdrawn.

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*Conclusion*

Applicant believes that all of the stated grounds of objection and rejection set forth by the Examiner in the Office Action have been properly accommodated or addressed. Applicant, therefore, respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and withdraw them. The Examiner is invited to telephone the undersigned representative if it is felt that an interview might be useful for any reason.

Respectfully submitted  
Ross Boyert

Date: June 29, 2006

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# Appendix I



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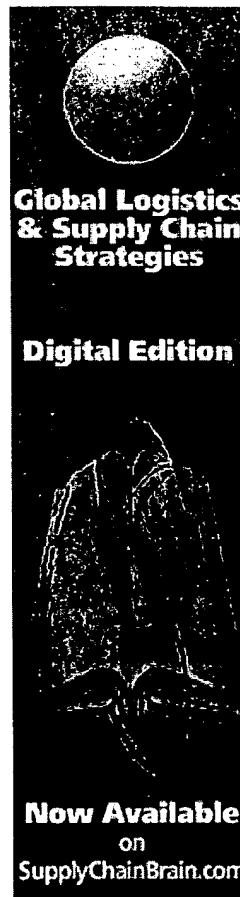
1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
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			Nov 29, 2001 *	Nov 29, 2001 *	Sep 27, 2002 *	Aug 06, 2003 *	Aug 06, 2003 *	Jun 05, 2004 *		
					Sep 29, 2002 *	Oct 02, 2003 *	Oct 02, 2003 *	Jun 11, 2004 *		
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					Dec 08, 2003 *	Dec 08, 2003 *	Dec 08, 2003 *	Jun 24, 2004 *		
					Dec 15, 2003 *	Dec 15, 2003 *	Dec 15, 2003 *	Jun 27, 2004 *		
					Dec 25, 2003 *	Dec 25, 2003 *	Dec 25, 2003 *	Jun 29, 2004 *		
								Jun 30, 2004 *		
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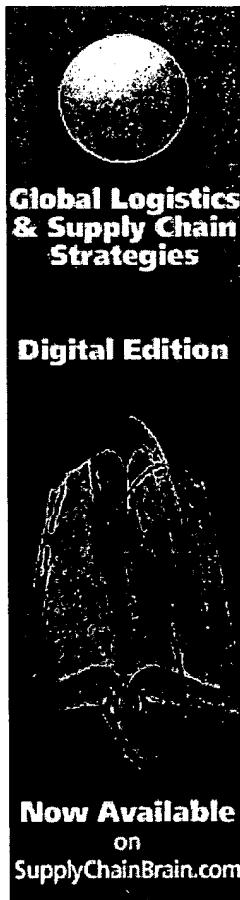
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